
VISITING EXPERTS' PAPERS

HUMAN TRAFFICKING PROSECUTIONS

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PROSECUTIONS**

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Today's Goals

- Discuss the U.S.'s approach to combating the human trafficking problem
- Debunk Myths about Human Trafficking
- Understand U.S. Human Trafficking Statutes
- Review the Investigation & Prosecution Model

The Big Picture: The Global Anti-Trafficking Movement

- **Prevention**
- **Protection**
- **Prosecution**

Approach to Human Trafficking Problem

- **Protect** human trafficking victims by debilitating traffickers
- **Prevent** human trafficking offenses by dismantling and disabling human trafficking networks
- **Prosecute** to declare human trafficking conduct intolerable under the laws and norms of the nation

The 3 "Ps":

| PREVENT | PROTECT | PROSECUTE |
|---------------------|--|---|
| Efficient outreach | Victim-centered approach to law enforcement investigations | Successful law enforcement investigations |
| Effective education | Immigration relief | Punishment |

A Rights-Based Approach: Victim-Centered Prosecutions

- **Victim-centered criminal justice process:**
 - **Vindicates victim's *individual rights***
 - **Non-Prosecution of Victims**
 - ***Empowers victim as an active participant***
 - **Aids transition from *traumatized victim to empowered survivor***
- **Transformation of law enforcement culture**
 - **Abandonment of pre-conceptions**
 - **Evolution of trauma-informed approaches**

U.S. Human Trafficking Strategy

Outreach
Coordination Building
Coalition Building

Role of Human Trafficking Prosecution Unit

- **Specialized Unit in DOJ's Civil Rights Division since 2007**
- **Prosecutorial expertise enforcing involuntary servitude and slavery laws and Trafficking Victims Protection Act**
- **Criminally prosecute novel, complex, multi-jurisdictional and international trafficking cases in partnership with United States Attorney's Offices**
- **Coordinate with federal, state, local, international and non-governmental partners**

Partnering Regionally

- **United States Attorney's Office**
- **Federal Law Enforcement: ICE, FBI, DOL**
- **Human Trafficking Task Forces**
- **Forthcoming ACTeams**
- **Local Law Enforcement**
- **Government Agencies**
- **NGOs**

What is Human Trafficking Under the U.S. Criminal Code?

- **Compelling or coercing a person's labor, services, or commercial sex acts; or commercial sexual exploitation of a minor**

What is Human Trafficking?

Working Definition

“Human Trafficking” is **compelling** someone to work **or** to engage in a commercial sex act.

What Human Trafficking Is Not!

- Illegal Child Adoption
- Trade in Human Organs
- Child Pornography
- Prostitution (Not a Federal Vice Squad)
- Labor Violations
- Poor Working or Living Conditions
- There are other statutes that deal with these offenses.

Trafficking vs. Smuggling

Trafficking

- Focus is coercion and exploitation; no movement required
- Victim can be citizen, documented migrant, or undocumented migrant
- Crime against individual rights
- *Criminalized in Title 18*

Smuggling

- Focus is transporting or harboring undocumented person
- Must involve undocumented migrant
- Crime against integrity of border
- *Criminalized in Title 8*

In a Nutshell....

- **Core of the crime is coercion**
- **Can occur in any industry, legal or illegal**
- **Victims can be men, women, children; undocumented, guestworkers, or citizens**
- **Coercion can be psychological**
- **Victims are often ‘hidden in plain sight’ and reluctant to confide: *case identification requires detection of subtle indicators***

Myths About Human Trafficking

Human Trafficking Myths

Slavery is a historical blight that no longer exists.

- 12.3 Million victims of human trafficking
U.S. Department of State, Trafficking in Persons Report 2010
- 27 million people held in slavery worldwide
Free The Slaves 2011
- 100,000 children in U.S. are in sex trade
Polaris Project 2011

Human Trafficking Myths

There are no foreigners in the case

- The law does not require foreign victims or defendants.
- United States v. Evans, 476 F.3d 1176 (11th Cir. 2007) (both the Defendant and the human trafficking victim were United States citizens).

Human Trafficking Myths

Trafficking Involves Movement and Borders

- No Borders Needed
- No Legal Requirement
- *Trafficking* is Misleading
- Coercion not Movement

Human Trafficking Myths

Trafficking Involves Movement and Borders

| Trafficking | Smuggling |
|-------------------------|------------------------|
| Exploitation Focus | Transportation Focus |
| Crime Against a Person | Crime Against a Border |
| Coerced / Involuntary | Voluntary |
| Citizen or Undocumented | Undocumented |

Human Trafficking Myths

This case does not involve prostitution or sex.

“Recent studies show the majority of human trafficking in the world takes the form of forced labor.” Dept. of State’s 2010 Trafficking in Persons Report.

Restaurant Workers

Domestic Servants

Farmers

Hotel Employees

Factory Workers

Restaurant Workers

Don’t Forget About the Labor Cases

Federal Laws

Involuntary Servitude and Slavery Crimes

- 18 U.S.C. § 1581 (Peonage)
- 18 U.S.C. § 1583 (Enticement Into Slavery)
- 18 U.S.C. § 1584 (Involuntary Servitude)

Trafficking Victims Protection Act

- 18 U.S.C. § 1589 (Forced Labor)
- 18 U.S.C. § 1590 (Trafficking Into Servitude)
- 18 U.S.C. § 1591 (Sex Trafficking)
- 18 U.S.C. § 1592 (Document Servitude)

Forms of Coercion

| | ISS [§ § 1581-84] | TVPA [§ § 1589-94] |
|-----------------------|-----------------------|------------------------|
| Physical Harm | YES | YES |
| Physical Restraint | YES | YES |
| Legal Coercion | YES | YES |
| Psychological Harm | NO | YES |
| Harm to Others | NO | YES |
| Scheme, Plan, Pattern | NO | YES |

Two Flagship TVPA Crimes

Forced Labor § 1589

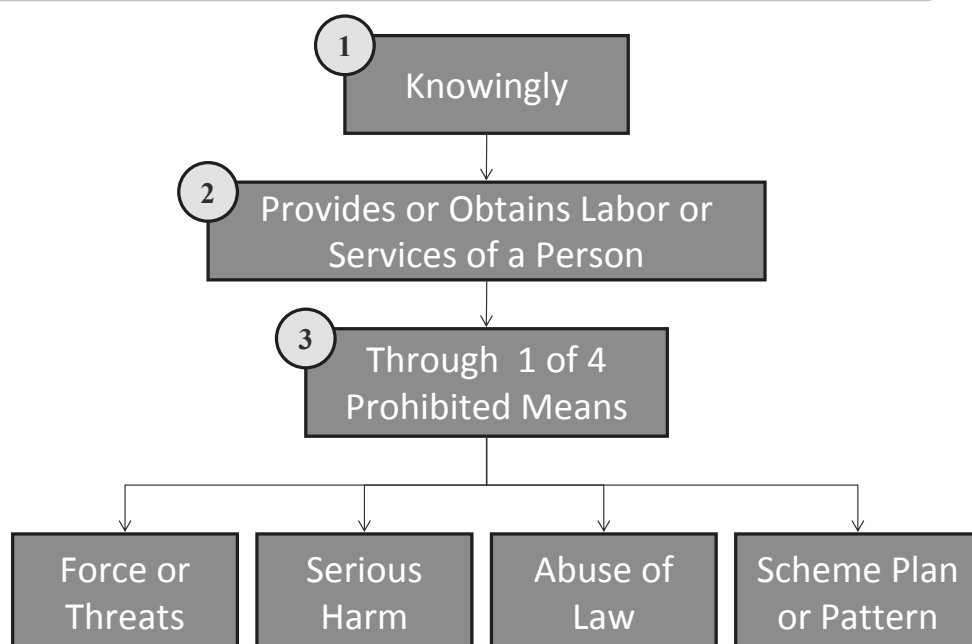
Sex Trafficking § 1591

Forced Labor | § 1589

3 Elements:

- Provided or obtained the labor or services of a person;
- Did so through one of the four prohibited means; and
- Did so knowingly

Forced Labor | 18 U.S.C § 1589



Forced Labor | § 1589

Labor of Services

- Broad Definitions of “Labor or Services”
- The Tenth Circuit rejected a limited definition of “labor and services” to “work in an economic sense. Instead, the Court upheld jury instructions defining “**labor**” as “**the expenditure of physical or mental effort**” and “**services**” as “**conduct or performance that assists or benefits someone or something.**” United States v. Kaufman, 546 F.3d 1242, 1262-63 (10th Cir. 2008) (involving mentally disabled adult farm workers forced to perform videotaped sex acts).
- Labor and services should **not** be narrowed to only mean “**work for which compensation is ordinarily given.**” United States v. Marcus, 487 F.Supp.2d 289, 300 (EDNY 2007) (involving recorded acts of bondage, domination, and sadism).

Forced Labor | § 1589

Four Prohibited Means

1. Force, or Threats of Force or Physical Restraint
2. Serious Harm or Threats of Serious Harm
3. Abuse or threatened abuse of law or legal process
4. Scheme, plan, or pattern intended to instill fear of serious harm or physical restraint to any person

Only Need 1 Prohibited Means.

Forced Labor | § 1589

Prohibited Means: Serious Harm:

- “that is **sufficiently serious**, under all the surrounding circumstances, to compel **a reasonable person** of the **same** background and in the same circumstances to perform or to continue performing labor or services in order to avoid incurring that harm.” 18 U.S.C. § 1589(c)(2)

Physical Harm

- * Threats
- * Beatings
- * Sexual Violence

Nonphysical Harm

- * Psychological Harm
- * Financial Harm
- * Reputational harm

Forced Labor | § 1589

Prohibited Means: Abuse of Legal Process

- Threat of deportation, arrest, detention, institutionalization
- “Warnings” unlawful where used to coerce.

Forced Labor | § 1589

Prohibited Means: Abuse of Legal Process

- The term “**abuse or threatened abuse of law or legal process**” means the use or threatened use of law or legal process, whether administrative, civil, criminal, in any manner or for any purpose for which the law was not designed, in order to exert pressure on another person to cause that person to take some action or refrain from taking some action.

▪ 18 U.S.C. § 1589(c)(1)

Forced Labor | § 1589

Prohibited Means: Scheme, Plan, Pattern

Totality of Circumstances from the Victim’s Perspective

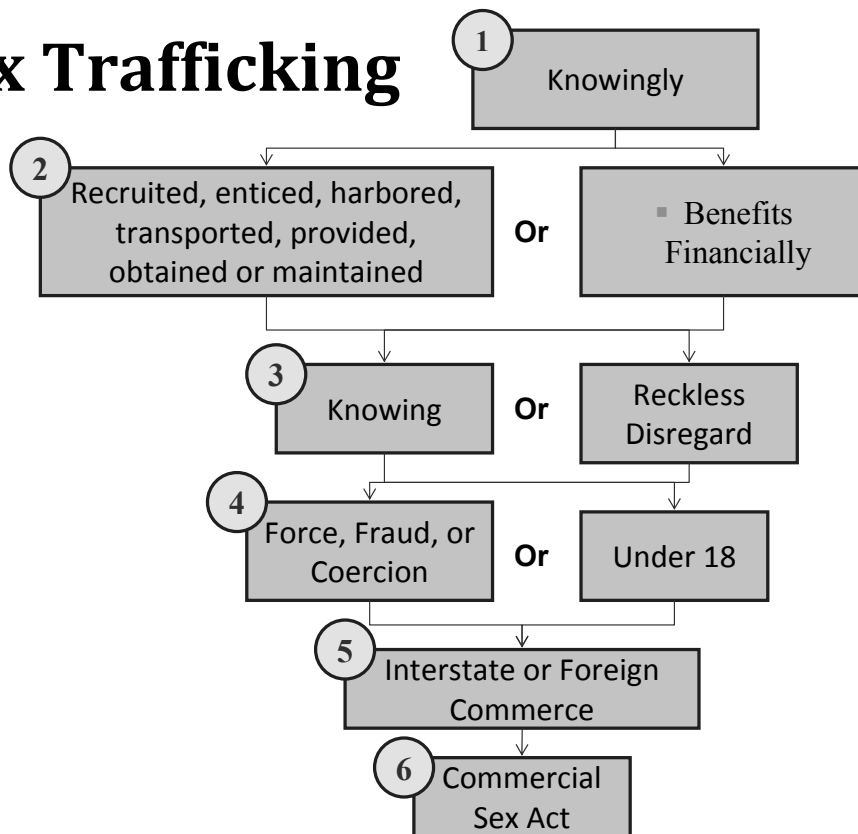
- Manipulation of debts
- Verbal abuse and intimidation
- Demeaning and demoralizing conduct
- Psychological manipulation and control
- Confiscation of identification documents
- Inhumane living and working conditions
- Ominous comments
- Monitoring and surveillance
- Sexual Abuse

Forced Labor | § 1589

Penalties

- **Imprisonment up to Life**
 - If death results; OR
 - If acts include kidnapping (or attempt), aggravated sexual abuse (or attempt), or an attempt to kill
- **Imprisonment up to 20 years**
 - No aggravating factors

Sex Trafficking



Sex Trafficking | § 1591

▪ 2 Knowledge Requirements

- **“Knowingly”** recruits, entices, harbors, transports, provides, obtains, or maintains a person for a commercial sex act or benefits financially.
- **“Knowing, or reckless disregard”** of the fact that force, fraud or coercion would be used or that victim was under 18
 - Knowledge of age is required to prove crime but not for victim status
 - Reasonable Opportunity to Observe

Sex Trafficking | § 1591

By Force, Fraud, or Coercion

18 U.S.C. § 1591(e)(2) defines “coercion” as

- threats of **serious harm** to or physical restraint against any person
- any **scheme, plan, or pattern** intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint
- abuse or threatened **abuse of the legal process**
- ****Basically the same as the prohibited means in § 1589****

Sex Trafficking | § 1591

▪ Sex Trafficking of a Minor

- Under 18 (“not attained the age of 18”)
- Knowing or in Reckless Disregard
- Reasonable Opportunity to Observe
 - 18 U.S.C. § 1591(c)

Sex Trafficking | § 1591

- What is a “Commercial Sex Act”?
 - “any sex act, on account of which anything of value is given to or received by any person.” § 1591(e)(3).
 - No requirement that the Defendant had sex with the victim.
 - Compare 18 U.S.C. § 2246 (2) “sexual act” and 18 U.S.C. § 2246 (3) “sexual contact”
 - For “exotic” dancing or massage consider § 1589 Forced Labor

Sex Trafficking | § 1591

▪ **In or Affecting Interstate or Foreign Commerce**

- Crossing state lines
- Interstate communications, facilities, or supplies,
- Aggregate affect on intrastate commercial or economic activity

No One Has to Travel Across State Lines!

Sex Trafficking | § 1591

In or Affecting Interstate or Foreign Commerce

- Victims crossing state lines
- Interstate communications, facilities, or supplies, e.g. hotels, cell phones, condoms, advertising, credit cards, wire transfers
- Aggregate effect of intrastate commercial or economic activity
- Develop all theories

Sex Trafficking | § 1591

Penalties

- **Imprisonment of 15 years to Life**
 - Force, fraud, or coercion used; OR
 - Defendant enticed, harbored, transported, provided, or obtained minor under 14 years old.
 - Mandatory Minimum of 15 Years.
- **Imprisonment of 10 Years to Life**
 - Defendant enticed, harbored, transported, provided, or obtained a minor who was at least 14 years old but under 18 years old.
 - Mandatory Minimum of 10 Years.

Sex Trafficking | § 1591

Mandatory Life Imprisonment for Repeated Sex Offenses against Children § 3559(e)

Mandatory life imprisonment if the defendant in a 1591 sex trafficking of a minor prosecution has a prior state or federal conviction for a sexual offense against a minor who has not attained the age of 17.

FORFEITURE

If convicted, any property, used or intended to be used to commit the crime – or any property derived from proceeds of the crime – shall be forfeited to the United States

RESTITUTION

A defendant can be ordered to pay the victim the full amount of losses as determined by the court and/or

A victim may bring a civil action against the perpetrator in U.S. District Court and recover damages and reasonable attorney fees

Prosecuting Human Trafficking: The Challenges

- **Hidden crime**
- **Victim trauma, shame, fear, loyalty, and distrust**
- **Complex, extended relationship with trafficker**
- **Intersection with violent crime, sex crime, organized crime, financial crime, immigration, labor exploitation, and visa fraud**

Investigation & Prosecution Model

- **Why is the model different that most other crimes?**
 - Multiple Law Enforcement agencies
 - 2 types of Federal Prosecutors
 - Social Service providing NGOs
 - Legal Service providing NGOs or Pro Bono Victim Lawyers
 - Federally funded task forces
 - Multiple victims
 - Victim / Witness coordinators

All parties play an important part . . . but there are a lot of cooks in the kitchen

Trafficking Indicators

- **Monitoring and surveillance**
- **Restricted or monitored communication**
- **'Spokesperson' for group**
- **Inconsistent or rehearsed stories**
- **Locks and fences positioned to restrict workers rather than to secure premises**
- **Employer control over identification documents and pay**
- **Overcrowded, substandard living or working conditions**

Possession of legal/identification documents

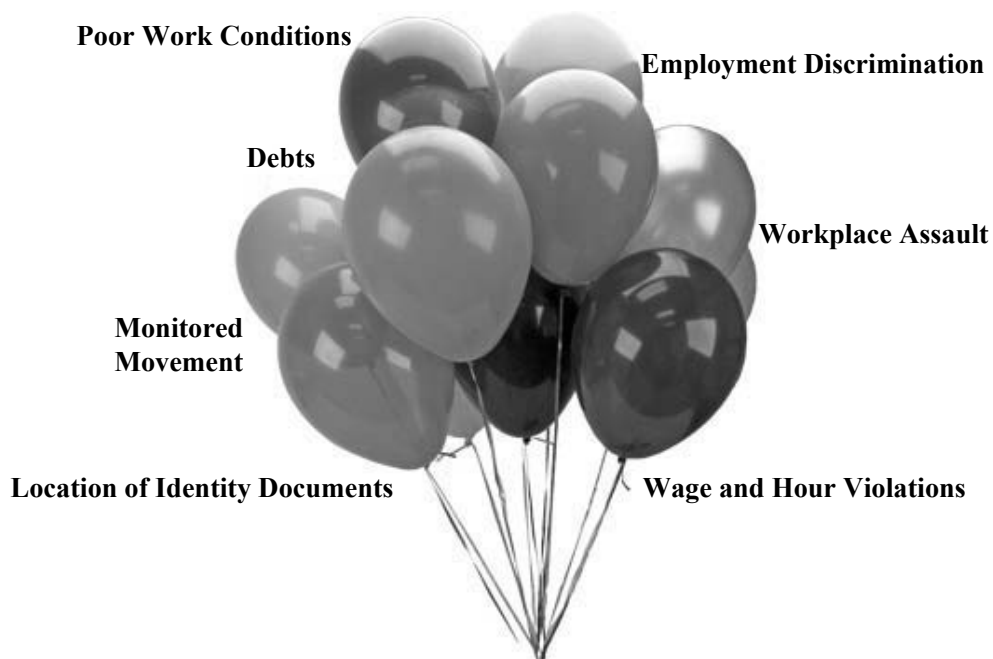
Security/confinement to restrain victims
(Barbed wire, dogs, bouncer/guard)

Restricted/monitored/controlled movement

Physical abuse



Think of Indicators Like Balloons.



Focus on how these things are tethered to the coercive scheme.

Investigation & Prosecution Model

Four Aspects of the Investigation

- 1. The Objective Facts**
- 2. The Victim's Story**
- 3. Corroborating the Victim**
- 4. Anticipating Defenses**

Prosecution Model

Initial Areas of Investigative Focus (Objective Factors)

- Age of Victims
- Subject's opportunity to observe minor victims
- Type of Labor or Services
- Type of Force or Coercion: totality of conduct and conditions
- Victim's Vulnerabilities and Inequalities
- Movement of Victim

Prosecution Model

Proving Coercion: Two Key Principles

- **Climate of Fear: Totality of Conduct and Conditions**
- **Victim Vulnerabilities**

Prosecution Model

Climate of Fear

- Locks, fences, surveillance cameras
- Control over documents and pay
- Restricted movement; isolation
- Monitored communications
- Inhumane conditions
- Inadequate food, medical care
- Arbitrary penalties, rules, control
- Economically irrational and demoralizing working conditions
- Interactions with law enforcement

Prosecution Model

Victim testimony is Crucial

- Crime requires showing of
“labor obtained by coercion”
– subjective component
- Show vulnerabilities
- Expect evolving /
contradicting statements
- In-person testimony
 - Lose case without it

Corroborate the Victim

▪ **Witnesses**

- Background, vulnerability, recruitment
- Isolation witnesses & ‘negative’ witnesses
 - Never saw victim out alone
 - Never heard victim speak English
- Previous victims
- Outcry witnesses
- Witnesses to any interactions
 - Visitors
 - Customers

Corroborate the Victim

▪ **Physical Evidence**

- Wire transfers, ledgers, bank records, receipts, computers
- Physical surroundings causing isolation and fear
- Visas, immigration and travel records
- Phone records
- Letters to victim’s family
- Photos, videotapes
- Medical records
- Leases, registrations linking subjects
- Prostitution paraphernalia: condoms, lubricant, lingerie, medications, tickets, business cards

Defenses: Benefits Bias

Making it up for Immigration Benefits

- Legal Status to stay in the United States
- Work authorization

▪“These women are not stupid. They may have some education. They may come in here dressed up and look pitiful. **In a lot of ways they are pitiful.** I submit to you that they are street smart. And anyone who lives on the street, who gets smuggled across the border, who uses a coyote and comes into this country for the same reason most people come in here is to make the big bucks. And they know how to con. I submit to you that **they conned the investigators** in this case, just like they conned their customers. . . . I submit to you that they have gone home after testifying here today feeling pretty damn satisfied with themselves.”

▪--Attorney for Def. “Santi” Villaman
▪(May 18, 2011)

Defenses: Benefits Bias

- Legal Status to stay in the United States
- Work authorization

“She exaggerated her case, and it suited everyone’s purpose to just go along with it.”

-- Attorney for Def. Evelyn Theodore
New York Times (May 18, 2008)

- Front Issues in Voir Dire
- Outweighed by corroboration
- Compare Benefits to Coercion

Defenses: Initial Consent

“If a person willingly begins work, but later desires to withdraw and is then forced to remain... by the use or threatened use of coercion, that person’s service becomes involuntary.”

Pattern Crim. Jury Instr. 11th Cir. § 59.

Defenses: Payment of Wages

“Whether a person is paid a salary or wage is not determinative of whether that person has been held in involuntary servitude....[I]f a person is forced to labor against that person’s will by the use or threatened use of coercion, such service is involuntary even though the person is paid...”

Pattern Crim. Jury Instr. 11th Cir. § 59.

Anticipating Defenses

The “Better Off” Defense

Anticipating Defenses

The “Happy Slave” Defense

Anticipating Defenses

The “Escape” Defense

“opportunity to flee is not determinative [if] defendants placed [victim] in such fear or circumstances that he did not reasonably believe he could leave”

Bradley, 390 F.3d 153

Anticipating Defenses

Religious / Cultural Defense

- “This is the way we do things in our country.”
- “According to our faith”

Prosecution Team

- Civil Rights Division Prosecutor
- Assistant U.S. Attorney
- ICE Agent
- FBI Agent
- Translator
- V/W Coordinator
- Victim has a pro bono attorney and NGO representative